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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,015	10/03/2001	Paul Vegliante	2112-342.1 US	2684

7590 12/08/2006  
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EXAMINER

HAMILTON, ISAAC N

ART UNIT PAPER NUMBER

3724

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/970,015

Applicant(s)

VEGLIANTE ET AL.

Examiner

Isaac N. Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,5-7,11-14,16-23,35-40 and 42-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,11-14,16-23,35-40 and 42-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 112***

1. The rejection made under 35 USC 112 is hereby withdrawn.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5, 6, 7, 11-17, 20-23, 40 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas, Jr. et al (5,440,961), hereafter Lucas, in view of Wankow (3,549,066). Lucas discloses everything as noted in Diagram 1; channel 13; bottom edge of upper portion of blade housing protrudes on either side of blade in figure 2; end surface of upper portion is rounded and inclined upward as shown in figure 2; tracking device 34; tubular base 31; channel has tubular shape as shown in figure 3; left section 39; right section 35; rivet 37; aperture 51; blade angled from bottom edge at 30 degree angle as shown in figure 2; depression 7; rear edge 5; cover of a carton 9.

Lucas does not disclose a material which provides an attraction to the plastic wrap. However, Wankow teaches material 30 which provides an attraction to the plastic wrap as recited in column 1, lines 30-45, and in column 2, lines 70-72. It would have been obvious to provide a material which provides an attraction to the plastic wrap in Lucas as taught by Wankow in order to prevent the use of a high friction surface. Note that Wankow discloses

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polyvinyl chloride with plasticizer in column 3, lines 36-45, and discloses that the material is smooth and non-porous in the figures.

The combination of Lucas and Wankow discloses the claimed invention except for the amount of plasticizer in the polyvinyl chloride being at least 10 percent. It would have been obvious to one of ordinary skill in the art to provide at least 10 percent plasticizer in the PVC for the purpose of cutting efficiency for different polymeric films, such as PVC or polyethylene. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 6, 7 and 16, coextrusion is a process that is well known in the manufacturing of Acrylic and other polymers as evidenced by Boda (5,524,515), and does not further limit the structure. The structure of the rails in the combination of Lucas and Wankow is the same as the structure of the rails when coextrusion is used to produce the rails.

Moreover, choosing which material to use is simply a matter of design choice and there is prior art disclosing the use of vinyl, PVC, Acetal or Silicon in plastic elements. For instance, Urion et al (4,210,043) has a blade housing formed of acetal, and Tsai (5,036,740) has a base rail formed of PVC. Since the applicant has not presented the specific advantages that these materials provide over the materials that one of ordinary skill in the art would have used, it would have been obvious to use vinyl, PVC, Acetal or Silicon in the combination in order to support the elements of the film cutter.

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4. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Lucas and Wankow as applied to claim 1 above, and further in view of Keene et al (3,277,760), hereafter Keene. Lucas discloses channel 13; pair of rails, upper section and lower section shown in Diagram 1 below. Lucas does not disclose a protrusion and does not disclose a blade housing that snap fits into a protrusion. However, Keene teaches protrusion 18, 29, 40, and discloses blade housing 40 that snap fits into the protrusion. It would have been obvious to provide a blade housing that snap fits into a protrusion in Lucas as taught by Keene in order to prevent the blade housing from sliding out of the elongated rail base.

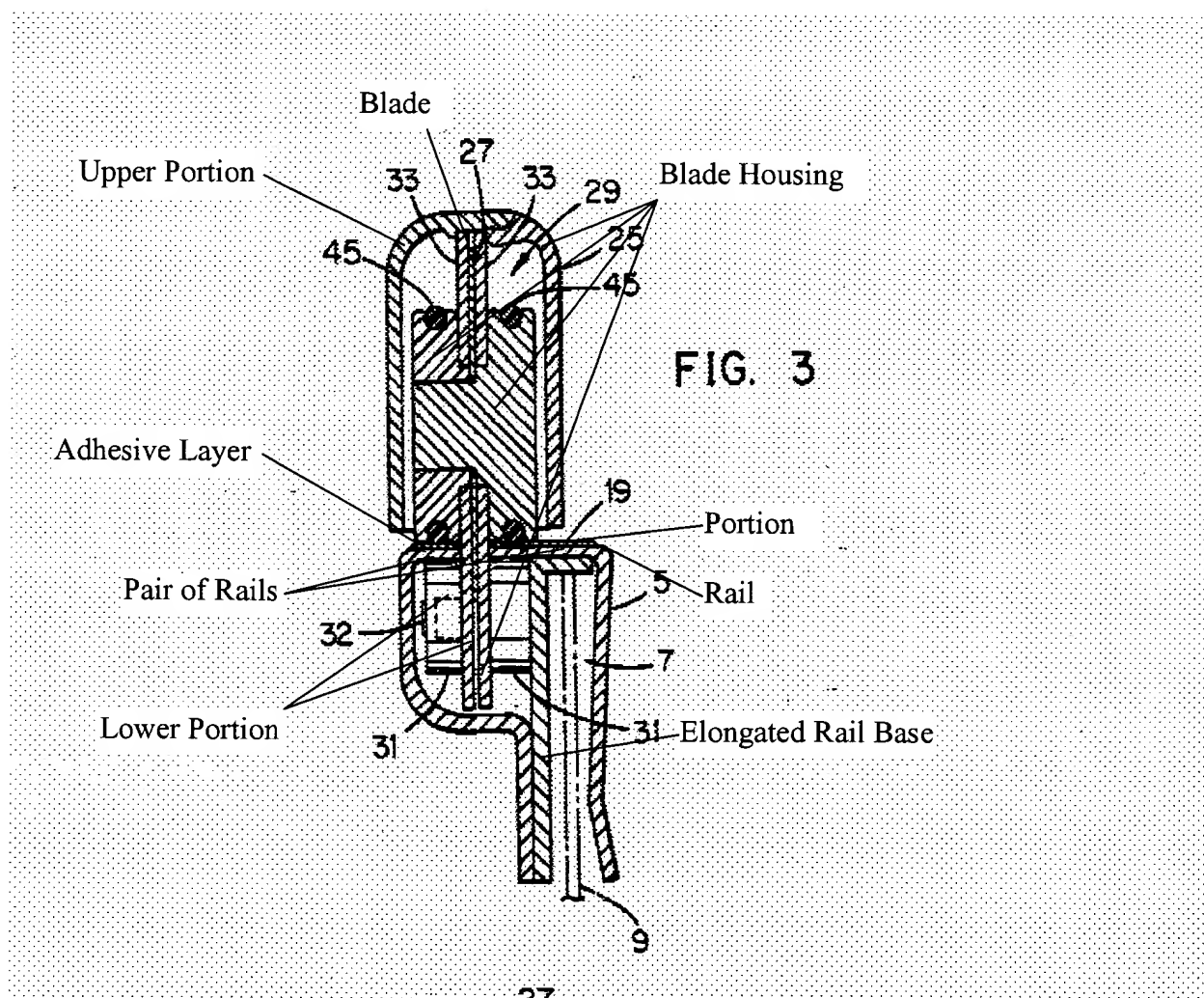


Diagram 1. Figure 3 in Lucas.

5. Claims 35-37, 40 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas, Jr. et al (5,440,961), hereafter Lucas, in view of Kaiser et al (5,292,046), hereafter Kaiser. Lucas discloses everything as noted in Diagram 1; channel 13; bottom edge of upper portion of blade housing protrudes on either side of blade in figure 3.

Lucas does not disclose a material which provides an attraction to the plastic wrap. However, Kaiser teaches material 190 which provides an attraction to the plastic wrap as recited in column 4, lines 1-10. It would have been obvious to provide a material which provides an attraction to the plastic wrap in Luca as taught by Kaiser in order to prevent the use of a high friction surface. Note that Kaiser discloses Acrylic, which is known to be smooth, and non-porous.

6. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Lucas, Jr. and Kaiser as applied to claims 35-37, 40 and 42-43 above, and further in view of Boda (5,524,515). The combination discloses everything as noted above, but does not disclose molding the rails by the method of extrusion. However, Boda teaches molding rails by extrusion in column 2, line 54. It would have been obvious to mold the rails in the combination as taught by Boda in order to make rails of varying lengths with the same profile.

***Response to Declaration of Paul Vegliante***

7. In the declaration, it is asserted that the maximum gram force of the acrylic rail in Kaiser does not hold the film firmly enough to provide consistent severing of the film before, during and after cutting of the film. Applicant further asserts that because the acrylic rail does not hold the film firmly enough to provide consistent severing of the film, the combination of Lucas and

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Kaiser is non-obvious. What the declaration fails to take into account is the amount of gram force that is required by the rails of Lucas. Only this amount can determine whether the combination is non-obvious because perhaps the maximum gram force provided by the urethane tape in column 3, lines 3-4, of Lucas does not precede 500 grams either. Without knowing what gram force is required by Lucas, the combination of Lucas and Kaiser cannot be proved to be non-obvious.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1, 5-7, 11-14, 16-23 and 44 have been considered but are moot in view of the new ground(s) of rejection. Regarding claim 12, applicant's arguments have been fully considered but they are not persuasive. Applicant asserts that the bottom edge of the upper portion of the blade housing does not protrude on either end from the blade, and that the end surface of the upper portion of the blade housing is not rounded and inclined upwardly from either end of the bottom edge. However, as shown in figure 2, the bottom edge of the upper portion of the blade housing does protrude on either end from the blade protruding from the bottom edge of the housing, and that the end surface of the upper portion of the blade housing is rounded and inclined upwardly from either end of the bottom edge.

With regard to claims 35-40 and 43, applicant's arguments filed 09/22/06 have been fully considered but they are not persuasive. Applicant asserts that the present claims define a rail providing cohesive cling properties, which the applicant asserts differs from a rail providing static cling attraction properties. Although there may be a difference between "cohesive cling properties" and "static cling attraction properties" is irrelevant because the claims do not distinguish between these types of cling properties. The claims simply state that the material of a

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rail has "cling properties" which does not limit the recited cling properties to be exclusively of the "cohesive" kind. In fact, "cohesive cling properties" is not even disclosed in the specification, and static cling attraction is disclosed in the specification as the type of cling properties provided by the rail material.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 571-272-4509. The examiner can normally be reached on Monday through Friday between 8am and 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IH

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December 5, 2006

  
KENNETH E. PETERSON  
PRIMARY EXAMINER